

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-6 (Sub-No. 408X)

BNSF RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN HAMILTON AND
MERRICK COUNTIES, NE

Decided: August 26, 2008

BNSF Railway Company (BNSF) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 15.60-mile line of railroad between BNSF milepost 1.90, near Aurora, and milepost 17.50, near Central City, in Hamilton and Merrick Counties, NE. Notice of the exemption was served and published in the Federal Register on March 22, 2004 (69 FR 13349-50).

By decision served on April 21, 2004 (April 2004 decision), the proceeding was reopened and the exemption was made subject to several environmental conditions.¹ By decision and notice of interim trail use or abandonment (NITU) served on May 26, 2004 (May 2004 decision), the proceeding was reopened again and a 180-day period was authorized for the Nebraska Trails Foundation, Inc. (NTFI), and the Central City Community Trails Committee of Central City, NE (CCCTC), to negotiate an interim trail use/rail banking agreement, under the National Trails System Act, 16 U.S.C. 1247(d), and to permit public use negotiations, under 49 U.S.C. 10905,² with BNSF, for BNSF's line segment between milepost 4.37, near Aurora, and milepost 17.50, near Central City, NE.³ The trail use negotiating period under the NITU was extended to January 26, 2005, by decision served on December 20, 2004. The NITU issued to NTFI and CCCTC expired on January 26, 2005, without an agreement being reached.⁴

¹ By decision served on October 7, 2005 (October 2005 decision), the conditions previously imposed in the April 2004 decision were modified.

² The public use condition, which is limited by statute to 180 days, expired on November 27, 2004, and may not be extended.

³ The May 2004 decision also granted BNSF's request to amend its notice of exemption to remove a 2.47-mile line segment from the scope of its abandonment, from milepost 1.90 to milepost 4.37. As modified, the NITU applied only to the line segment located between milepost 4.37 and milepost 17.50.

⁴ By decisions served on March 7, 2005, December 29, 2005, and June 28, 2006, the Board granted requests from BNSF for extensions of time to file its notice of consummation, most recently until December 31, 2006.

On October 16, 2006, NTFI filed a request to extend the NITU negotiating period so that it could complete an agreement for interim trail use/rail banking and close on the transaction in January 2007. On October 31, 2006, NTFI filed a clarification of its request. NTFI stated that the extension request was filed on behalf of it and CCCTC, and applied only to the 7.87-mile portion of the right-of-way between milepost 9.63, near Marquette, and milepost 17.50. By decision served on November 6, 2006, the NITU negotiating period was extended until January 31, 2007, for the segment of the line between mileposts 9.63 and 17.50.

By letter filed on December 26, 2006, BNSF advised the Board that the subject line from milepost 9.63 to milepost 17.50 will be rail banked. BNSF also advised that it will be consummating a discontinuance of service only, and not abandonment, of the line from milepost 4.37 to milepost 9.63.

While a Board decision in response to BNSF's December 26, 2006 filing advising of its partial consummation of the authorization given might not be necessary, this decision is being issued so that the status of the two segments of the line will be clear. First, as noted, BNSF has advised that the line segment from milepost 9.63 to milepost 17.50 will be rail banked. Second, regarding the segment between milepost 4.37 and milepost 9.63, if a railroad wishes to discontinue service over a portion of a rail line, after it has been granted authority to abandon but before it has consummated abandonment, it may exercise the lesser included authorization of discontinuance. See T&P Ry.—Aban.—Shawnee, Jefferson, & Atchison Count., KS, 2 S.T.B. 36, 40 (1997) (noting that the Board retains jurisdiction over a line that has been authorized for abandonment when the railroad decides to exercise only the lesser-included authority to discontinue service). The Board's grant of regulatory approval to abandon through a carrier's filing of a notice of exemption permits, but does not require, the transaction to proceed. Abandonment and Discontinuance of Rail Transportation Under 49 U.S.C. 10903, STB Ex Parte No. 537, slip op. at 17 n.3 (STB served Mar. 15, 1996). Therefore, BNSF's notice that it intends to exercise discontinuance authority only, and not abandonment, of the line segment from milepost 4.37 to milepost 9.63, will be accepted. As a result, BNSF no longer has authority to abandon the line segment between mileposts 4.37 and 9.63. Furthermore, should BNSF wish to abandon the portion of the line between milepost 4.37 and milepost 9.63 at a later date, it must seek appropriate Board authority.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. BNSF's notice of consummation of discontinuance of service only between milepost 4.37 and milepost 9.63 is accepted.

3. BNSF must notify the Board if it is going to discontinue rail banking and consummate the abandonment of that segment of line between mileposts 9.63 and 17.50, subject to the environmental conditions imposed in the October 2005 decision.

4. Rail banking is subject to the future restoration of rail service.

5. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan
Acting Secretary